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FIRST GENERAL COUNSEL'S REPORT

MUR: 6594

DATE COMPLAINT FILED: 06/14/2012

DATE ACTIVATED: 11/13/2012

STATUTE OF LIMITATION: 04/18/2017

COMPLAINANTS:

David Clark, Cheryllyn Eagar,
Howard Wallack, and John Williams

RESPONDENTS:

Friends of Chris Stewart, Inc. and Chris
Marston in his official capacity as treasurer
Chris Stewart
Milton Hanks for Congress¹
Milton Hanks
Randy Minson
Brian Steed
Timothy Stewart

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(a)(22),(23)
2 U.S.C. § 441d
11 C.F.R. § 100.26
11 C.F.R. § 100.27
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Complainants are four unsuccessful candidates for the 2012 Republican nomination for Utah's second congressional district. They allege that Respondents may have been responsible

¹ No treasurer is listed for Milton Hanks for Congress, because Milton Hanks never filed a Statement of Organization following his February 29, 2012, filing of a Statement of Candidacy and designation of a principal campaign committee. It appears that neither Hanks nor his campaign received or spent in excess of \$5,000, and so he never became a "candidate" within the meaning of 2 U.S.C. § 431(2). He dropped out of the race after losing at the Utah Republican State Nominating Convention held on April 21, 2012. See Milton Hanks Resp. at 1.

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1 for a letter with no disclaimer mailed to a select group of delegates prior to the Utah Republican
2 State Nominating Convention. Respondents deny the allegation, all but one by sworn affidavit.
3 Because it does not appear likely that more than 500 copies of the anonymous letter were mailed,
4 the mailer did not meet the definition of "public communication" requiring a disclaimer. *See* 11
5 C.F.R. §§ 100.26, 100.27, 110.11. Accordingly, we recommend that the Commission find no
6 reason to believe that any of the Respondents violated section 441d of the Federal Election
7 Campaign Act of 1971, as amended, (the "Act") and close the file.

8 **II. FACTS**

9 On April 18, 2012, someone sent an undated letter without a disclaimer (the "Anonymous
10 Letter") to an unknown number of delegates to the Utah Republican Nominating Convention,
11 which was held on April 21, 2012 (the "Convention"). *See* Compl. at 2, Ex. A (June 14, 2012).
12 The Anonymous Letter is typed on plain paper, with no letterhead, signature, or other identifying
13 characteristics. *Id.*, Ex. A.

14 The Anonymous Letter is entitled, "Why you should not vote for Chris Stewart . . . It
15 comes down to Integrity." *Id.* Stewart was a candidate for the Utah second Congressional
16 district. *Id.* The letter accuses Stewart of having ties to the "infamous Temple Mailer,"²
17 disparages Stewart's lobbying firm, and claims that he embellished his military record. *Id.* It
18 ends with "just ask yourself this: With so many other candidates running for the 2nd District,
19 isn't there a better choice (or two, or three)?" *Id.*

² MUR 6317 (Utah Defenders of Constitutional Integrity) ("UDCI") involved the so-called "Temple Mailer," a document sent by UDCI with an incomplete disclaimer to delegates shortly before the 2010 Utah Republican Nominating Convention. The mailer had a picture of candidate Mike Lee standing beneath a picture of the Mormon Church and candidate Robert Bennett standing beneath a picture of the U.S. Capitol and rhetorically asked "Which candidate really has Utah values?" Although Chris Stewart's brother, Timothy Stewart, participated in the events leading to the mailer and signed the conciliation agreement for UDCI, the Commission found no reason to believe that Timothy Stewart in his official capacity as treasurer of a different entity violated the Act and took no action against him in his individual capacity. *See* MUR 6317 Conciliation Agreement; Amended Cert. dated Apr. 5, 2011; Cert. dated Mar. 19, 2012.

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1 On April 19, 2012, Stewart's campaign sent a response to delegates denying the charges
2 in the Anonymous Letter. Compl. at 3, Ex. F. Thereafter, at the Convention, Milton Hanks,
3 another candidate seeking the Republican nomination for the second congressional district,
4 publicly accused four candidates in that race (the complainants in this matter) of conspiring to
5 send the Anonymous Letter. *Id.* at 7, Ex. L at 4.³ Complainants deny this accusation. *Id.* at 7.

6 The Chairman of the Utah Republican State Party conducted an inquiry. The report
7 concluded that the four candidates Hanks accused were not responsible for the letter. Compl.,
8 Ex. L at 5. Ultimately, "[d]espite considerable time and energy," the Chairman was unable to
9 determine who sent the Anonymous Letter. Compl., Ex. L at 3. The Chairman was also unable
10 to determine "how many State Delegates received the communication," though the report notes
11 that the letter "appears to be hand-folded and hand-stamped—it does not appear to have been
12 mass produced and there is no return address." *Id.*

13 As to the distribution of the letter, Complainants allege only that the Anonymous Letter
14 was sent to "a select group of [973 Convention] delegates." Compl. at 2-3. Complainants attach
15 a May 7-12, 2012 survey that was allegedly conducted to determine the number of delegates who
16 received the letter and the impact of the letter on the balloting at the Convention. The survey,
17 they claim, presents the results of completed calls to 419 delegates.⁴ The survey shows that only
18 43 delegates acknowledged receiving the letter, and 197 did not receive it. *Id.*, Exhibit B. The
19 Complainants state that "[15%] of State Delegates polled . . . say they received the Anonymous
20 Letter." *Id.* at 2.

³ Exhibit L consists of a two page cover letter and a seven page report, followed by attachments. The pages are unnumbered, but the citations in this Report are to pages 1-7 of Wright's report.

⁴ The polls results are labeled "Howard Wallack – Independent Research." Howard Wallack is one of the complainants.

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1 Complainants base their allegation that Respondents were responsible for the Anonymous
2 Letter on various assertions and what they call "closely-connected consultants, and the numerous
3 similarities in the prior FEC violation," which they allege "are more than coincidental." Compl.
4 at 9.⁵

5 The joint response attaches affidavits from Friends of Chris Stewart and its treasurer,
6 Chris Stewart, Randy Minson, and Brian Steed, and an affiant from the U.S. Postal Service.
7 These affidavits rebut or explain most of the asserted bases for the Complainants' allegations,
8 and deny any responsibility or knowledge of the Anonymous Letter. See Stewart Resp. at Decl.
9 of Chris Stewart ¶ 8 (Jul. 6, 2012); Decl. of Randy Minson ¶ 9 (Jul. 9, 2012); Decl. of Brian
10 Steed ¶ 24 (Jul. 9, 2012). By separate responses, Timothy Stewart, Chris Stewart's brother, and
11 Milton Hanks also denied responsibility for the Anonymous Letter. See Decl. of Timothy
12 Stewart ¶ 4 (Jul. 9, 2012); Milton Hanks Resp. at 2-3.

13 **III. LEGAL ANALYSIS**

14 The only violation alleged in this matter is the absence of a disclaimer on the Anonymous
15 Letter. All public communications made by a political committee must include disclaimers. See
16 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). Any person that makes a disbursement for a
17 public communication that expressly advocates the election of a clearly identified candidate must
18 include a disclaimer that conforms to the requirements in 2 U.S.C. § 441d(a) and 11 C.F.R.

⁵ These include: the Stewart campaign's quick response to the Anonymous Letter, which Complainants speculate show that the Stewart campaign or its agents pre-planned both letters, Compl. at 2-4; a rumor they allege the Stewart campaign started before the Convention that his opponents' campaigns were engaging in a negative campaign against him and planned to disseminate false information about him, Compl. at 4-5; Respondent Timothy Stewart's link to a mailer before the 2010 Nominating Convention, Compl. at 8; a dismissed case involving Respondent Randy Minson, a Stewart campaign consultant Compl. 8-9; an alleged statement by Respondent Brian Steed, Stewart's campaign manager, at the Convention, Compl. at 9; and the alleged "sham campaign" of Respondent Hanks, who allegedly was a strong supporter of Stewart, Compl. at 5-6.

1 § 110.11(a)-(c).⁶ The term "public communication" includes a "mass mailing." 2 U.S.C.
2 § 431(22); 11 C.F.R. § 100.26. A "mass mailing" is defined as "a mailing by United States mail
3 ... of more than 500 pieces of mail matter of an identical or substantially similar nature within
4 any 30-day period." 2 U.S.C. § 431(23); 11 C.F.R. § 100.27.

5 The record does not provide reason to believe that 500 or more copies of the Anonymous
6 Letter were mailed. Complainants do not allege that this threshold has been met. They only
7 state that the letter was mailed to "select delegates" or "undecided voters;" Complainants own
8 survey identified only 43 individuals who acknowledged receiving the letter. Compl. at 2-3, Ex.
9 B. In his report, the Utah Republican Chairman states that "it is not clear how many State
10 Delegates received the communication." Compl. Ex. L at 3.

11 There is therefore an insufficient basis upon which to conclude that the Anonymous
12 Letter was a public communication.⁷ See MUR 6138 (Honeycutt for Congress) (taking no
13 further action on section 441d(a) violation where the evidence was inconclusive whether a mailer
14 and a flier were "public communications"). See MUR 6138 Cert. dated Oct. 20, 2011; General
15 Counsel's Report #2 (dated Jul. 27, 2011) at 7-11. Accordingly, we recommend that the
16 Commission find no reason to believe that Chris Stewart, Friends of Chris Stewart Inc. and Chris
17 Marston in his official capacity as treasurer, Hanks, Hanks for Congress, Minson, Steed, and
18 Timothy Stewart violated 2 U.S.C. § 441d and close the file.

⁶ If a disclaimer is required, the disclaimer for a communication that is paid for and authorized by a candidate, an authorized committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized committee. 2 U.S.C. § 441d(a)(1). The disclaimer for a communication not authorized by the candidate shall clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

⁷ In view of our conclusion that there is insufficient information that the Anonymous Letter was a "public communication," it is not necessary to reach whether the Anonymous Letter contained express advocacy.

IV. RECOMMENDATIONS

1. Find no reason to believe that Chris Stewart violated 2 U.S.C. § 441d.
2. Find no reason to believe that Friends of Chris Stewart, Inc. and Chris Marston in his official capacity as treasurer violated 2 U.S.C. § 441d.
3. Find no reason to believe that Milton Hanks violated 2 U.S.C. § 441d.
4. Find no reason to believe that Milton Hanks for Congress violated 2 U.S.C. § 441d.
5. Find no reason to believe that Randy Minson violated 2 U.S.C. § 441d.
6. Find no reason to believe that Brian Steed violated 2 U.S.C. § 441d.
7. Find no reason to believe that Timothy Stewart violated 2 U.S.C. § 441d.
8. Approve the attached Factual and Legal Analysis.
9. Approve the appropriate letters.
10. Close the file.

Anthony Herman
General Counsel

February 11, 2013
Date

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